

**ONE HUNDREDTH LEGISLATURE - SECOND SESSION -  
2008**

**COMMITTEE STATEMENT**

**LB1016**

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**Hearing Date:** February 11, 2008

**Committee On:** Business and Labor

**Introducer(s):** (Lathrop)

**Title:** Adopt the Proper Employee Classification Act

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**Roll Call Vote - Final Committee Action:**

Placed on General File with Amendments

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**Vote Results:**

6 Yes	Senators Cornett, Lathrop, McGill, Rogert, Wallman, White
0 No	
1 Absent	Senators Chambers
0 Present, not voting	

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**Proponents:**

Ken Mass  
Kelly Pinkham  
Jim Steele  
Brice Neiman  
Martin Walter

**Representing:**

Nebraska State AFLCIO  
University of Missouri Economics Department  
Falewitch Construction Services  
EDK Drywall of Omaha  
Carpenters' District Council of Kansas City  
and Vicinity

**Opponents:**

Jim Otto

Larry Ruth

Korby Gilbertson

James Overcash

**Neutral:**

Jim Otto

Laura Peterson

Ron Sedlachek

Bob Hallstrom

**Representing:**Nebraska Retail Federation  
Nebraska Restaurant AssociationEastern Nebraska Development Council  
Associated General Contractors  
Nebraska ChapterNebraska State Home Builders Association  
AGC Building NECA**Representing:**

Nebraska Retail Federation

Department of Administrative Services

Nebraska Chamber of Commerce  
Greater Omaha Chamber of Commerce

NFIB

**Summary of purpose and/or change:**

LB 1016 would create the Proper Employee Classification Act (Act). The Act would prohibit employers from misclassifying employees as independent contractors. Individuals who have been misclassified would have a cause of action in District Court to recover the amount of combined taxes, state income taxes and the difference in pay the employer would have paid if it weren't for the misclassification.

All employers would be required to post notice of worker's protection under the Act. Retaliatory discharge for voicing a grievance under the Act is prohibited.

Contractors entering into labor contracts with the State or political subdivision must first certify that each person working under the contract is properly classified and has completed an I-9 Illegal immigration form. The contractor must certify that they have no reason to believe the workers are illegal immigrants. If the contractor provides a false statement, such contractor would be subject to penalties for perjury and would be barred from entering into contracts with the state or political subdivision for 5 years.

**Section by Section Summary**

Section 1: would create the Proper Employee Classification Act.

Section 2: would provide definitions.

Section 3: would provide a distinction between an employee and an independent contractor. Workers performing services are employees unless the following are true: the individual has been and continues to be free from control or direction over the performance of service both under the contract and in fact; the individual is performing an independently established trade, occupation, profession or business; the individual service is available to the general public; the individual furnishes the tools and equipment necessary to provide service; and the entity does not hold the individual out as an employee to the customers.

Section 4: would make it unlawful to designate an individual as an employee, who is actually an independent contractor under section 3.

Section 5: would provide a cause of action in district court for those aggrieved through violation of the Act, in addition to remedies available through the Department of Labor and the Department of Revenue. Recovery would include the following amounts that should have been paid if the employee had been properly classified: the amount of combined taxes, state income taxes, the difference in pay or \$100 for each week that the employee was misclassified (whichever is greater), and attorney's fees and costs. In the case of unlawful retaliation, all legal and equitable relief is available.

Amounts recovered shall be equitably divided by the interested parties.

Section 6: would prohibit retaliatory discharge for exercising rights granted under that Act.

Section 7: would require all employers to post notice of workers rights under the Act.

Section 8: Would require the state or any political subdivisions entering into a contract for labor, would require the contractor to submit an affidavit attesting that each person performing labor is properly classified, and each worker has completed a federal I-9 illegal immigration form, and that such contractor or subcontractor has no reasonable basis to believe that any such person is an illegal immigrant.

Section 9: Any contractor providing a false affidavit under Sec. 8 shall be subject to the penalties for perjury and cannot contract with the state or any political subdivision for 5 years from the date of such discovery.

Section 10: would provide that the Act shall not be construed to affect or apply to tort recovery, or to affect the common-law interpretation of independent contractor status as it relates to tort liability or a workers' compensation claim.

### **Explanation of amendments, if any:**

The Committee Amendment (AM 2322) would rewrite the bill to incorporate the following major changes: to re-name the Act "The Contractor Employee Classification and Public Contract Act", to limit the Act's applicability to construction contractors, to strike the provisions allowing for a class action suit, to provide a safe harbor provision, and to decrease the penalties for falsely attesting to the hiring of undocumented workers.

The committee amendment would provide, section-by-section, as follows:

Section 1: would create the Contractor Employee Classification and Public Contract Duty Act.

Section 2: would provide definitions. Such definitions would limit the Act's application to Contractors in the business of construction. Construction would have the same meaning as found in 48-2103.

Section 3: Subsection (1) would provide a distinction between an employee and an independent contractor. Workers performing services are employees unless the following are true: the individual has been and continues to be free from control or direction over the performance of service both under the contract and in fact; the individual is performing an independently established trade, occupation, profession or business; the individual service is available to the general public; the individual furnishes the tools and equipment necessary to provide service; and the contractor does not hold the individual out as an employee to the customers.

Subsection (2) would provide that an individual is presumed to be a independent contractor if: the individual has registered under the Contractor Registration Act at least six months prior to commencing construction work for the contractor; the individual has been assigned a combined tax rate for purposes of unemployment insurance taxes; and the individual is listed on the data base of contractors established by the Department of Revenue.

Subsection (3) would require the Department of labor to establish a hotline to allow contractors to call and verify the requirements of subsection (2).

Section 4: would make it unlawful to designate an individual as an employee, who is actually an independent contractor under section 3.

Section 5: would provide a cause of action in district court for those aggrieved through violation of the Act, in addition to remedies available through the Department of Labor and the Department of Revenue. Recovery would include the following amounts that should have been paid if the employee had been properly classified: the amount of combined taxes, state income taxes, and the difference in pay for each week that the employee was misclassified, and attorney's fees and costs. In the case of unlawful retaliation, all legal and equitable relief is available.

Amounts recovered shall be equitably divided by the interested parties.

Section 6: would prohibit retaliatory discharge for exercising rights granted under the Act.

Section 7: Would require all employers to post notice of workers rights under the Act.

Section 8: Would require the state or any political subdivisions entering into a contract for construction, would require the contractor to submit an affidavit attesting that each person performing construction is properly classified, and each worker has completed a federal I-9 immigration form, and that such contractor or subcontractor has no reasonable basis to believe that any such individual is an undocumented worker.

Section 9: Any contractor providing a false affidavit under Sec. 8 would be subject to the penalties for perjury on the first offense and for a second or subsequent offense cannot contract with the state or any political subdivision for 3 years from the date of such discovery.

Section 10: would provide that the Act shall not be construed to affect or apply to tort recovery, or to affect the common-law interpretation of independent contractor status as it relates to tort liability or a workers' compensation claim.

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Senator Abbie Cornett, Chairperson